Message Text

CONFIDENTIAL

ACTION L-03

INFO OCT-01 ARA-10 ISO-00 SOE-02 AID-05 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 DOE-15 H-01 INR-10 INT-05
NSAE-00 NSC-05 OMB-01 PM-05 ICA-11 OES-07 SP-02
SS-15 STR-07 TRSE-00 ACDA-12 /126 W
----------042865 071912Z /47
R 071645Z APR 78
FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 1857

C O N F I D E N T I A L SECTION 1 OF 2 CARACAS 3235

E.O. 11652: GDS
TAGS: ENRG, EINV, VE
SUBJECT: ESPOUSAL OF TEXACO CLAIM

REF: STATE 77133

1. WE BELIEVE OFFICIAL REPRESENTATIONS ALONG THE LINES

SUGGESTED IN PARA 6 REFTEL WOULD BE FRUITLESS. MOREOVER,AS
A TACTICAL CONCEPT IT MISUNDERSTANDS CURRENT REALITIES. THE
MINISTRY OF MINES HAS CLOSED ITS BOOKS ON THE ASSET VALUATION
QUESTION AND CONSIDERS IT SETTLED; THE SUPPOSITION, THEREFORE, THAT
THIS IS A MATTER STILL IN THE PROCESS OF NEGOTIATION OR SUBJECT
TO PERSUASION IN THAT SENSE IS INCORRECT. IN THE MINISTRY'S VIEW
IT HAS ALREADY NEGOTIATED WITH THE
COMPANIES AND REACHED ITS DECISION (EVEN THOUGH IN TEXACO'S
CASE THE COMPANY DISAGREES WITH THAT DECISION), AND HAS
COMPLIED WITH THE LAW. OFFICIAL RESOLUTIONS HAVE BEEN ISSUED
FOR EACH COMPANY AND PUBLISHED IN THE OFFICIAL GAZETTE (CARACAS
2890).

2. RESOLUTIONS HAVING BEEN ISSUED, WE FRANKLY DO NOT
BELIEVE THE MINISTRY CAN BE PERSUADED TO REOPEN THE
TEXACO CASE, AND CERTAINLY NOT BY THE COMPANY'S ARGUMENTS
CONFIDENTIAL

CONFIDENTIAL

(SEE BELOW). WHILE THE AMBASSADOR CAN TALK TO THE
MINISTER, WE ANTICIPATE THAT ANY SUGGESTION THAT THE
MINISTRY REVISE THE TEXACO DEDUCTIONS WOULD BE REJECTED
AND THE COMPANY SIMPLY INVITED TO PURSUE JUDICIAL
REMEDIES IF IT WISHES.

3. AS NOTED, THE ARGUMENTS MADE BY THE COMPANY ARE NOT

GOING TO PERSUADE THE MINISTRY, AND ARE RATHER DUBIOUS ON
THEIR OWN MERITS:

(A) THE MINISTRY WOULD REJECT ANY ARGUMENT THAT THERE WAS
NO DUE PROCESS. REPRESENTATIVES OF ALL THE COMPANIES PARTICIPATED
IN THE EVALUATION PROCESS OVER THE PAST TWO
YEARS. TEXACO'S LOCAL REPRESENTATIVE HAD REPEATED MEETINGS
WITH OFFICIALS OF THE REVERSION COMMISSION, AND ON VARIOUS OCCASIONS
TEXACO TECHNICAL EXPERTS CAME DOWN FROM THE US TO REVIEW THE
EVALUATIONS

THE EVALUATIONS IN PROGRESS. AS LATE AS 1977 A TEXACO EXPERT
REPORTEDLY REVIEWED EVERY WELL WHICH WAS IN DISPUTE. THEREFORE,
AN ARGUMENT THAT TEXACO DID NOT HAVE THE FACTS OR
DID NOT KNOW THE BASES FOR THE DECISIONS WOULD NOT APPEAR
CREDIBLE. THAT TEXACO DOES NOT AGREE WITH THOSE BASES OR JUDGES
THEM TO BE ARBITRARY IS A DIFFERENT FOCUS.

(B) AS THE DEPARTMENT NOTED (PARA 3 REFTEL), THE ARGUMENT
THAT THERE WAS DISCRIMINATION BECAUSE TEXACO'S DEDUCTIONS
ARE HIGHER THAN THE "AVERAGE" IS HARD TO SUSTAIN. TO THE
MNISTRY, COMPARABILITY AMONG COMPANIES HAS NOTHING TO DO
WITH THE EVALUATION ISSUE; THAT QUESTION INVOLVES EACH
CASE AND EACH ASSET ON ITS MERITS. WE ALSO DO NOT THINK
TEXACO'S ARGUEMENT OF A BIAS IN FAVOR OF THE BIG COMPANIES
CAN BE DEFENDED. ACTUALLY, THE TWO COMPANIES THAT FARED
CONFIDENTIAL

BEST OF ALL WERE SMALL ONES--CONTINENTAL (3 PERCENT OF
COMPENSATION) AND AMOCO (7 PERCENT). ON THE OTHER HAND,TALON,
A VENEZUELAN COMPANY, WAS ABOVE THE AVERAGE (CLOSE TO 30 PERCENT
OF COMPENSATION). THE PRIMA FACIE EVIDENCE DOES NOT DEMONSTRATE
ANY CONSISTENT DISCRIMINATION EITHER AGAINST FOREIGN COMPANIES OR
AGAINST SMALL COMPANIES, OR EVEN AGAINST TEXACO AS SUCH, THERE
BEING A WIDE DIFFERENCE BETWEN THE TWO MAJOR TEXACO COMPANIES
(19 AND 67 PERCENT OF COMPENSATION). AS AN ASIDE, THE CONCEPT
OF "AVERAGE" AS A MEASURE OF DISCRIMINATION IS PUZZLING, SINCE
AVERAGE IS SIMPLY THE MATHEMATICAL MEAN INDICATING HALF OF THE
COMPANIES ARE BELOW IT AND HALF ABOVE; IF ALL COMPANIES
ABOVE THE "AVERAGE" WERE TO CLAIM DISCRIMINATION, WHAT IS THE
LOGIC OF THE CONCEPT "AVERAGE?" ARE THEY TALKING
ABOUT A "CEILING" OR "UNIFORMITY?" IF SO, THESE CONCEPTS
WERE NEVER CONTEMPLATED, INTENDED OR ACCEPTED BY THE GOV
AND THE VENEZUELAN CONGRESS.

(C) TEXACO'S ARGUMENT THAT DEDUCTIONS ARE UNJUSTIFIED
UNDER THE NATIONALIZATION LAW IS ALSO MOOT. LOCAL PRIVATE
LAWYERRS REPRESENTING OTHER PRIVATE COMPANIES CHALLENGE
THIS ARGUMENT. THESE SOURCES POINT OUT THAT THE 1971
REVERSION LAW ESTABLISHED THE GUARANTEE FUND TO GUARANTEE

THAT THE COMPANIES WOULD MAINTAIN THEIR ASSETS IN GOOD
WORKING CONDITION. THE NATIONALIZATION LAW REFERRED BACK TO
THE REVERSION LAW PROVISIONS FOR THE FUND, INDICATED THE FUND
WAS TO BE USED TO INSURE COMPLIANCE WITH THE OBLIGATIONS
IT WAS DESINGED TO GUARANTEE, AND SAID THAT
THE MINISTRY WAS TO INVENTORY THE ASSETS AND DETERMINE
THEIR STATE OF CONSERVATION AND MAINTENANCE WITHIN THREE
YEARS OF THE TIME THE ASSETS WERE RECEIVED. THUS, THE
NATIONALIZATION LAW DOES PROVIDE FOR APPLICATION OF THE
REVERSION LAW IN THIS ASPECT. THESE SOURCES ALSO POINT OUT
THAT THE NATIONALIZATION LAW DOES NOT SPECIFY PAYMENT
OF NET BOOK VALUE.RATHER IT STATES THAT COMPENSATION
WILL NOT "EXCEED" NET BOOK VALUE, AND IT DOES NOT INDICATE
THAT THE ASSETS WERE ACCEPTED ON AN "AS ITS" BASIS. BOTH
CONFIDENTIAL

CONFIDENTIAL

PAGE 04 CARACA 03235 01 OF 02 071800Z

THE NATIONALIZATION LAW (ART. 17) AND THE ACTAS SIGNED BY
THE COMPANIES IN LATE 1975 ACCEPTING COMPENSATION (ART. III)
EXPRESSLY PROVIDE FOR THE POSSIBILITY OF FURTHER DEDUCTIONS. LOCAL
COUNSEL INDICATES THAT COMPANIES HAVE SIX MONTHS FROM THE
DATE (MARCH 8) OF THE ASSET DEDUCTION RESOLUTIONS IN WHICH TO
CHALLENGE THE LEGALITY OF THOSE RESOLUTIONS IF THEY WISH.HOWEVER,
LOCAL OIL CIRCLES TELLUS THAT NO COMPANY IS PLANNING TO CHALLENGE
THESE RESOLUTIONS, AMONG OTHER REASONS BECAUSE THEY DO NOT WISH TO
JEOPARDIZE OR PREJUDICE THE TAX CLAIM SITUATIONS.

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 CARACA 03235 02 OF 02 071819Z
ACTION L-03

INFO OCT-01 ARA-10 ISO-00 SOE-02 AID-05 CEA-01 CIAE-00
COME-00 DODE-00 EB-08 DOE-15 H-01 INR-10 INT-05
NSAE-00 NSC-05 OMB-01 PM-05 ICA-11 OES-07 SP-02
SS-15 STR-07 TRSE-00 ACDA-12 /126 W
----------043196 071911Z /47
R 071645Z APR 78
FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 1858

C O N F I D E N T I A L SECTION 2 OF 2 CARACAS 3235

(D) TEXACO'S OTHER ARGUMENT THAT THE NATIONALIZATION LAW
PROVIDES INADEQUATE COMPENSATION TO BEGIN WITH (2C REFTEL)
GETS INTO VERY DIFFICULT AND FUZZY GROUND. WE NOTE ONLY
THE FOLLOWING: LOCAL LEGAL CIRCLES CAREFULLY DISTINGUISH
THE FACT THAT THE NATIONALIZATION LAW DID NOT EXPROPRIATE
BUT RATHER "EXTINGUISHED" THE CONCESSIONS AND DECLARED THE
ASSETS TO BE OF PUBLIC UTILITY. THE LAW WENT ON TO PROVIDE
TWO ROUTES BY WHICH THE AMOUNT OF INDEMNIZATION COULD BE DETERMINED.
THE FIRST WAS THROUGH MUTUAL AGREEMENT BETWEEN THE GOV AND THE
EX-CONCESSIONAIRES IN EFFECT A CONTRACT TO BUY THEIR ASSETS AND
THE OTHER INVOLVED A COMPLEX EXPROPRIATION PROCEDURE INVOLVING THE
SUPREME COURT. ALL OF THE COMPANIES (EXCEPT OCCIDENTAL) TOOK THE
FIRST ROUTE AND ALL INCLUDING TEXACO SIGNED DETAILED AGREEMENTS WITH
THE GOV BY WHICH THEY ACCEPTED THE AMOUNT OF INDEMNIZATION OFFERED
(ART 1 OF THE ACTAS), AGREED TO THE CONCEPT OF FURTHER DEDUCTIONS
IN ACCORD WITH THE NATIONALIZATION LAW (ARTICLE III) AND
RELINQUISHED FURTHER CLAIMS ONCE THIS INDEMNIZATION WAS PAID (ART.
V, SEC. 5). LOCAL ATTORNEYS BELIEVE THAT FULL PAYMENT WAS EFFECTED
WHEN THE FULL AMOUNT OF BONDS WERE HANDED OVER TO THE COMPANIES,
DESPITE THE FACT THAT THE COMPANIES WERE THEN REQUIRED TO RETURN A
PORTION OF THESE BONDS TO THE GUARANTEE FUND UNDER THE REVERSION
LAW.IN ANY CASE,IT WOULD APPEAR THAT HAVING SIGNED AN ACTA AGREEING
WITH THE GOVERNMENT ON THE AMOUNT OF COMPENSATION, TEXACO MAY BE
ESTOPPED FROM NOW CHALLENGING THAT AMOUNT.
CONFIDENTIAL

CONFIDENTIAL

4. WE NOTE THAT TEXACO, ON THE ONE HAND, ARGUES PRINCIPLE,
BUT ON THE OTHER, IS WILLING TO FOREGO PRINCIPLE IF IT CAN GET A
27 PERCENT LEVEL.WHAT IS BASICALLY AT ISSUE FOR THE COMPANY IS
WHETHER IT IS WILLING TO SETTLE FOR THE EXTRA THREE MILLION DOLLARS
OVER WHAT IT HAS CALLED ITS LIMIT (AND HOW IT TRADES THAT OFF
AGAINST EVERY OTHER INTEREST IT HAS). AS WE SEE IT, THE COMPANY
WOULD LIKE TO BRING IN THE USG AS ITS ADVOCATE TO INCREASE
PRESSURES ON THE GOV. AS WE NOTED, HOWEVER, THE OPPORTUNITY
FOR NEGOTIATION SEEMS TO HAVE PASSED (AND WHETHER THE COMPANY
HANDLED ITSELF WELL DURING THE NEGOTIATION PERIOD IS A QUESTION);
TO ARGUE "PRINCIPLES" IS A QUESTIONABLE ROUTE BECAUSE THE MERITS ARE
DUBIOUS, AND IN ANY CASE THAT WOULD OPEN UP ALL KINDS OF DARK
ALLEYS; FINALLY, IF TEXACO PLAYS HARD BALL NOW IT WILL AFFECT ALL
OF ITS SISTER COMPANIES AND SERIOUSLY ENDANGER THEIR POSITIONS.

5. ON THE QUESTION OF ESPOUSAL, WE CURRENTLY BELIEVE THAT
IT IS VERY DOUBTFUL THAT ESPOUSAL WOULD BE JUSTIFIED ON
ITS MERITS. BUT IN ANY CASE, WE BELIEVE THAT POLITICALLY
ESPOUSAL WOULD BE CONTRARY TO THE LARGER US NATIONAL INTERESTS.
INDEED, NO SINGLE STEP WOULD CONTRIBUTE MORE TO THE DESTRUCTION
OF THE OVERALL US-VENEZUELAN RELATIONSHIP, TO DAMAGING ALL US
ECONOMIC INTERESTS HERE AND TO PREJUDICING THE PRESENT AND FUTURE
POSITION OF ALL THE OIL COMPANIES THAN ESPOUSAL.

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

VAKY

CONFIDENTIAL

NNN

Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: PETROLEUM INDUSTRY, CLAIMS, ASSETS, COMPENSATION
Control Number: n/a
Copy: SINGLE
Draft Date: 07 apr 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978CARACA03235
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Expiration:
Film Number: D780151-0219
Format: TEL
From: CARACAS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780482/aaaacrqc.tel
Line Count: 225
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 64a6d4b4-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 78 STATE 77133
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 18 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3045317
Secure: OPEN
Status: NATIVE
Subject: ESPOUSAL OF TEXACO CLAIM
TAGS: ENRG, EINV, VE, US, TEXACO
To: STATE
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/64a6d4b4-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014